

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Daryl E. Jensen,
Petitioner

v.

Minneapolis Public Housing Authority,
Respondent

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Jane A. McPeak on June 4, 1996 at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138.

Daryl E. Jensen, Petitioner, 2702 Erin Lane NE, Rochester, Minnesota 55906, appeared on his own behalf. Mary G. Dobbins, Director of Legal Services of the Minneapolis Public Housing Authority, 1001 Washington Avenue North, Minneapolis, Minnesota 55401-1043, appeared on behalf of Respondent, Minneapolis Public Housing Authority. The record closed at the conclusion of the hearing on June 4, 1996.

Notice is hereby given that, pursuant to Minn. Stat. Section 14.61 the final decision of the Commissioner of Veterans Affairs shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Bernie Melter, Commissioner of Veterans Affairs, Veterans Service Building, 20 West Twelfth Street, Saint Paul, Minnesota 55155-2079.

STATEMENT OF ISSUE

The issues in this case are as follows:

1. Whether Respondent acted in bad faith in abolishing Petitioner's position and terminating his employment..
2. If the Petitioner was removed from his employment in bad faith, what relief, if any he is entitled to receive.

Based upon the record herein, the Administrative Law Judge makes the following

FINDINGS OF FACT

1. Petitioner is an honorably discharged veteran of the United States Army who served from September 2, 1969 to September 1, 1975.

2. Petitioner, a fifteen year employee of the Minneapolis Public Housing Authority, was notified by letter on March 15, 1996 that a revised organizational structure requiring fewer staff was required to respond to changes in federal funding, to better meet the needs of low income persons in the City of Minneapolis currently and in the future, and to do an even better job of utilizing increasingly scarce resources, and that his position was being eliminated.

3. From 1991 until the time of his termination on March 22, 1996, Petitioner worked as a maintenance coordinator for Respondent's south high rises.

4. As maintenance coordinator for the south high rises, Petitioner was responsible for the supervision of the performance of a large diverse labor force and administrative staff to ensure the coordination and timely completion of both routine and extraordinary maintenance operations and for the performance of other duties as assigned. Petitioner's Exhibit 2 sets forth examples of such duties and required knowledge, skills, and abilities..

5. Respondent is a property management entity whose mission is to provide well managed housing for low income individuals in Minneapolis.

6. Respondent is governed by the federal Department of Housing and Urban Development (HUD) in Washington, D.C. and locally in Minneapolis by a Board of Commissioners.

7. The Board of Commissioners appoints an executive director who must be approved by the City Council of Minneapolis.

8. Since 1991 Cora McCorvey has been Respondent's executive director.

9. Respondent's Board of Commissioners has directly delegated to the executive director the authority to make appointments to vacant positions and to terminate employment; however, the chair of the Board must provide signature approval of all appointments.

10. HUD provides to Respondent subsidies, resources, and rules and regulations for compliance with federal laws.

11. In late 1994 Respondent first became aware of certain funding issues, specifically that HUD was engaging in a process of "recisions" by which the federal government takes back funding already given or committed to public housing authorities.

12. In response to this process of "recisions" Executive Director McCorvey met with her deputy director, senior staff and the chair of the Board.

13. The result of these meetings was a decision that preparations must begin immediately to deal with the cut backs.

14. Preparations included meetings with divisions heads and the request from them for recommendations regarding reorganization of staff.

15. The issues involved reduction in staff, the search for efficiencies, the maintenance of a high level of service to residents and of scores received in HUD's evaluation process, and the review of contracts with outside providers to determine if there were ways to reduce costs.

16. With respect to reduction in work force, division directors were asked to meet with their staffs, to identify vacant positions which would be considered first in the reduction process, to release temporary employees before reducing any full time equivalents, and to present other ideas for budget reduction.

17. The first cuts, which did not result in any reduction in work force, occurred during the summer of 1995 and amounted to about \$5 million; however a \$1.5 million budget short fall has been projected effective October 1, 1996.

18. The planning process to deal with the federal "recisions" occurred over an eight to nine month period culminating in the divisions director's recommendations and reorganization proposals being accepted by both Executive Director McCorvey and the Board of Commissioners.

19. On March 15, 1996 thirty-five positions were eliminated and of those thirty five, twenty-one had been occupied and fourteen vacant.

20. Respondent reorganized its maintenance operations by creating the position of manager of maintenance for high rises where previously there had been separate managers for the family high rises and the north and south high rises.

21. The four maintenance coordinator positions, one of which was vacant, were eliminated and the manager of maintenance for high rises was created to place final accountability in one individual, to eliminate unnecessary and burdensome coordination efforts among the individual managers of each of the high rises, to insure more efficient use of resources, and to streamline communications with senior management.

22. The duties and responsibilities of the manager of maintenance for high rises differ significantly from those of maintenance coordinator for a specific high rise in that the manager must lead a larger and more diverse work force, coordinate and facilitate greater multiple activities, interact more frequently with senior staff, provide more advanced leadership skills, and serve as the ultimate decision maker in the area of maintenance operations for all high rises.

CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Department of Veterans Affairs have jurisdiction in this matter pursuant to Minn. Stat. Sections 197.481 and 14.50 (1990).

2. The Notice of Hearing was proper in all respects and the Department of Veterans Affairs has complied with all relevant, substantive and procedural requirements of law and rule.

3. Petition is a “veteran separated from military service under honorable conditions” within the meaning of Minn. Stat. Sections 197.447 and 197.46 and is entitled to all the protections and benefits of the Minnesota Veterans Preference Act.

4. Respondent is a political subdivision within the meaning of Minn. Stat. Section 197.46.

5. Respondent did not act in bad faith in abolishing Petitioner’s position and in terminating his employment.

6. Respondent acted in good faith for a legitimate purpose and not in subterfuge to oust Petitioner from his positions in abolishing Petitioner’s position and in terminating his employment.

7. Because Respondent acted in good faith for a legitimate purpose Petitioner is not entitled to receive any relief.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Veterans Affairs issue an order dismissing Petitioner’s petition.

Dated this ____ day of July 1996.

JANE A. MCPEAK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. Section 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded.

MEMORANDUM

The issue in this case is whether Respondent acted in bad faith in abolishing Petitioner's position and in terminating his employment. Based upon all the testimony and exhibits received, it is concluded that Respondent did not act in bad faith. Rather Respondent, upon hearing of substantial federal budget cuts, acted in a responsible and deliberative manner to prepare for this inevitability.

The Veterans Preference Act does not prevent a political subdivision from terminating the employment of a veteran by abolishing his position if this action is taken in good faith and for a legitimate purpose and not as a mere subterfuge to oust him from his position. State ex rel. Caffrey v. Metropolitan Airports Commission, 310 Minn. 480, 246 N.W. 2d 637 (1976).

Respondent acted in good faith and for a legitimate purpose in abolishing Petitioner's position and in terminating his employment.